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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/824,646

04/15/2004

Krystal Krull

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EXAMINER

NEWTON, JARED W

ART UNIT

PAPER NUMBER

3693

MAIL DATE

DELIVERY MODE

11/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/824,646

Applicant(s)

KRULL, KRYSTAL

Examiner

Jared W. Newton

Art Unit

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11, 12, 16-19, 24 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 12, 16-19 and 29-34 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Non-final rejection is in reply to the remarks filed August 8, 2007, by which claims 1-10, 13-15, 20-23 and 25-28 were canceled, claims 11, 19, 24, 29 and 30 were amended, and claims 31-34 were added.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's request filed on August 8, 2007 has been entered.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 32-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

had possession of the claimed invention. The Specification as originally filed does not provide support for the following limitations:

- "the guide rod has a diameter of one to two inches" (claim 32);
- "a separation distance between the guide sleeve and the guide rod is 1/16 to 1/8 inch" (claim 33);

Claim 34 is rejected under this section because it depends from claim 33.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "low friction" in claim 34 is a relative term which renders the claim indefinite. The term "low friction" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. A material that is considered "low friction" by one of ordinary skill in the art may be considered "not low friction" or "high friction" by another.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 12, 16-19, and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 3,737,047 to Ruth (hereafter Ruth) in view of US Patent No. 4,941,578 to Devening (hereafter Devening).

In regard to claims 11 and 19, Ruth discloses a rolling storage rack for supporting automobile tires T (see FIG. 2), said rack comprising: a plurality of tire storage racks 10 having spaced horizontally extending crossbars 14 with a fully open gap therebetween for supporting tires with a portion of the tires hanging below the crossbars and a portion of the tires extending laterally beyond the crossbars, the plurality of tire storage racks including movable storage racks, said movable storage racks being movable between fixed elements (walls, W – see FIG. 7) located at opposite sides of a group of the movable storage racks, the movable storage racks including lower wheels 15a, 16a for rolling in contact with the floor, a guide arrangement 18 for guiding movement of the movable storage racks, and at least one spacing element 15, 16, 17 for extending laterally from the racks a distance to separate the racks and to prevent tires on one rack from contacting tires on an adjacent rack by controlling an amount of space between adjacent ones of said plurality of storage racks so that when adjacent spacing elements are in contact, the spacing elements provide a separation between the racks to avoid contact of tires on adjacent racks (see FIG. 2 – said spacing elements 15, 16, 17 extend further in the lateral direction than do said tires T).

Ruth does not teach a guide arrangement mounted on an upper end of the movable storage racks, wherein a guide sleeve encircles a guide rod. Nor does Ruth teach the fixed elements as fixed racks, wherein the guide assembly is anchored to the fixed racks. Devening discloses a storage system comprising: a plurality of storage racks 13 including movable storage racks, said movable storage racks being movable between fixed storage racks (see col. 1, ln. 64-68) located at opposite sides of a group of the movable storage racks, the movable storage racks including lower wheels 18 for rolling in contact with the floor, a guide arrangement 25 for guiding movement of the movable storage racks, wherein said guide arrangement 25 is disposed at the upper end of said rack, and includes a guide rod/rail that extends between the fixed elements (see col. 1, ln. 61-65), and said guide rod cooperates with a guide sleeve 22 mounted on the movable storage racks, wherein the guide sleeve encircles the guide rod (see FIGS. 1 and 4).

The Ruth and Devening references are analogous art because they are from the same field of invention--movable storage racks. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the guide arrangement disclosed by Devening on the rack disclosed by Ruth. The motivation for providing a movable storage rack with an upper guide assembly would be to prevent the rack from falling over while in motion. While the lower guide assembly as taught by Ruth helps keep the rack in line, it does not prevent the rack from tipping or falling in situations where the rack may be heavily top-loaded or moving quickly. The upper guide assembly disclosed by Devening is an obvious means for curing the deficiency of the Ruth rack.

It would have been further obvious to one of ordinary skill in the art at the time of the invention to replace the fixed elements of Ruth with the fixed racks of Devening so that the guide assembly is anchored to said fixed racks and extends therebetween. The motivation for making the fixed elements racks would be to maximize storage space.

In regard to claim 12, Ruth further discloses said spacing element including at least one arm 22 located spaced from the storage rack on which the spacing element is mounted (see FIG. 1).

In regard to claim 16, Ruth further discloses said wheels encased in a protective boot formed by spacing elements 15, 16, and 17 (see FIG. 1).

In regard to claim 17, Ruth further discloses a plurality of tires T located on said racks (see FIG. 2).

In regard to claim 18, Devening discloses the guide arrangement as anchored to said fixed storage racks (see FIG. 2).

In regard to claim 29, Devening teaches fixed storage racks as set forth above.

In regard to claim 30, Ruth shows said rack supporting a plurality of tires T.

In regard to claim 31, the guide sleeve disclosed by Devening is a hollow tube.

In regard to claim 32, it would have been obvious to one of ordinary skill in the art at the time of the invention to construct the guide rod disclosed by Devening so as to have a two inch diameter, as a matter of design choice.

In regard to claim 33, it would have been obvious to one of ordinary skill in the art at the time of the invention to construct the guide rod and guide sleeve disclosed by

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Devening so as to provide a clearance of 1/16 to 1/8 of an inch between the two elements, as a matter of design choice.

In regard to claim 34, Devening further discloses a low friction material (bearing) between the guide sleeve and the guide rod.

### ***Allowable Subject Matter***

Claim 24 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- US Patent No. 4,807,765 to Brown et al.
- US Patent No. 3,801,176 to Higbee
- US Patent No. 5,597,217 to Hoska et al.
- US Patent No. 4,615,449 to Naito et al.
- US Patent No. 4,618,191 to Peterman
- US Patent No. 3,557,966 to Skubic
- US Patent No. 7,143,474 to Welsch



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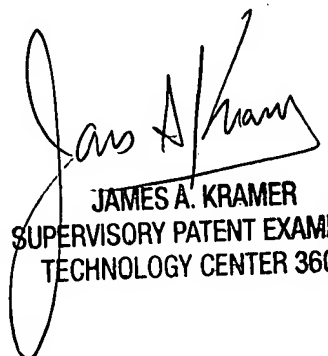
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JWN  
October 30, 2007



11.6.07  
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